IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	}
V.	Criminal No. 03-24E
CURTIS MOSES	

ORDER

Before the Court is Curtis Moses' "Dodd" Motion to Preserve the Retroactivity of Booker and Shepard (Doc. 18). Defendant requests that the Court allow him to preserve the issue of retroactivity in the event that the United States Supreme Court's decision in <u>United States v. Booker</u>, 543 U.S. 220, 125 S. Ct. 738 (2005) is ruled retroactive. <u>Booker</u> does not apply retroactively to claims on collateral review and thus this motion will be denied.

The United States Court of Appeals for the Third Circuit addressed the applicability of the Booker decision to the cases of those prisoners, like Petitioner, whose judgment was final prior to the Booker decision being rendered. In United States v. Lloyd, 407 F.3d 608 (3d Cir. 2005), cert. denied, 126 S.Ct. 288 (2005), the Third Circuit court held that although the rule announced in Booker qualifies as a new rule of criminal procedure, it is not to be applied retroactively to prisoners whose judgment was final as of the date the Booker decision was issued. "Because Booker announced a rule that is 'new' and 'procedural,' but not 'watershed,' Booker does not apply retroactively to initial motions under § 2255 where the judgment was final as of January 12, 2005, the date Booker issued. Lloyd, 407 F.3d at 615-616. Petitioner was sentenced on August 25, 2003, and no appeal was filed. Accordingly, because Mr. Moses' judgment was final prior to the date Booker issued, the rule announced in Booker is not applicable to his case.

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Maurice B. Cohill, Jr.

Maurice B. Cohill, Jr. Senior United States District Judge

cc: counsel of record

Curtis Moses